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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1938

No. [redacted] 29

ELMIRA NICHOLS AND PAULINE THOMPSON,
Appellants,

vs.

COMMONWEALTH OF MASSACHUSETTS.

APPEAL FROM THE SUPERIOR COURT, COUNTY OF WORCESTER, COMMONWEALTH OF MASSACHUSETTS.

STATEMENT OPPOSING JURISDICTION AND MOTION TO DISMISS.

PAUL A. DEVER,
Attorney General,
EDWARD O. PROCTOR,
Assistant Attorney General.

INDEX.

Subject Index.

	Page
Statement opposing jurisdiction and motion to dismiss	1

Cases Cited.

Lovell v. *City of Griffin*, 303 U. S. 444	2
Near v. *Minnesota*, 283 U. S. 697	2

Authorities Cited.

Constitution of the United States, 14th Amendment	4

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1938

No. 849

ELMIRA NICHOLS,

Appellant,

vs.

COMMONWEALTH OF MASSACHUSETTS.

PAULINE THOMPSON,

Appellant,

vs.

COMMONWEALTH OF MASSACHUSETTS.

APPELLEE'S STATEMENT DISCLOSING MATTERS OR GROUNDS MAKING AGAINST THE JURISDICTION OF THE SUPREME COURT OF THE UNITED STATES AND MOTION TO DISMISS.

This Court should not take jurisdiction of this appeal for the reason that it presents no substantial Federal question for decision.

The municipal ordinance of the city of Worcester, Massachusetts, here drawn into question is a reasonable and valid regulation of the use of the public ways for the preservation of public order, the protection of travelers

from annoyance, and the prevention of misuse or littering of the streets or ways, and in no way denies or impairs freedom of speech or freedom of the press, and as thus construed takes it out of the rule announced by this Court in

Lovell v. *City of Griffin*, 303 U. S. 444.

The ordinance is within the authority of the State, under its police powers to promote the health, safety, morals, and general welfare of its people.

Near v. *Minnesota*, 283 U. S. 697, at page 707.

The ordinance is not unlimited as to any time or any place or in any manner, but is strictly limited to public streets and ways in the city of Worcester.

Lovell v. *City of Griffin, supra*, 303 U. S. 444, at page 451.

The appellants say on page 6 *et seq.* of their Statement Disclosing Basis of Jurisdiction of this Court, that their purpose is: "to show that an ordinance such as the one in question * * * is in reality and effect one that creates an unreasonable if not a total restriction on the free dissemination of literature and opinion and is thus in violation of the right of freedom of the press." From that point in their statement the appellants argue that the ordinance if held to be valid will greatly curtail the right of individuals to circulate information and opinion among the public.

The above quoted statement with the subsequent argument to support it puts an interpretation upon the ordinance in question at variance with the interpretation put upon it by the Supreme Judicial Court of Massachusetts. The Supreme Judicial Court of Massachusetts is a court of final jurisdiction and its opinions are final and binding within the Commonwealth of Massachusetts. In the decision of

the instant case by that court, upon which this appeal is grounded, the court interpreted the ordinance here in question. That interpretation is the law of Massachusetts and the statement of these appellants cannot vary or extend its scope. A reading of that opinion (appendix A of Appellant's Statement) clearly discloses that

> "The wording of the section of the ordinance as a whole indicates that it was directed to the object of preventing the accumulation of litter and rubbish in the streets and preserving the comfort and preventing the annoyance of travellers, and that it was not directed against the liberty of the press, Properly construed, we see no reason why in practical operation it should extend beyond the legitimate purpose for which it was designed. It does not prevent the casual passing of papers from one traveller to another in isolated instances. See Commonwealth *v.* Ellis, 158 Mass. 555. It forbids persons to 'distribute'. This implies an offering to many people, with the consequent probability of littering the neighborhood with papers which, if not painstakingly gathered by someone, will become unsightly, annoying and obnoxious. We think that the word 'distribute,' in connection with the other language used and in view of the apparent object of the section, does not include sale, and that the ordinance does not forbid the sale of newspapers or other printed matter in the streets. The section is not in any sense directed toward the suppression of ideas, theories or opinions. It involves no censorship. It interferes in no way with the publication of anything in the city of Worcester, except only that it excludes the public streets and ways from the places available for free distribution. It leaves open for such distribution all other places in the city, public and private."

As thus limited the ordinance does not invade the privileges or immunities which the appellants claim for themselves and does not offend against the constitutional guaran-

tees contained in the Fourteenth Amendment of the Constitution of the United States.

The appellee therefore moves to dismiss the appellant's appeal because there is no substantial federal question to be decided and because the subject matter thereof has already been decided by the Supreme Court of the United States.

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Counsel for Appellee,
By EDWARD O. PROCTOR,
Assistant Attorney General.